STATE OF MICHIGAN

COURT OF APPEALS

EDWARD W. SPARROW HOSPITAL ASSOCIATION, Petitioner-Appellee,	UNPUBLISHED February 15, 2011
v DEPARTMENT OF TREASURY, Respondent-Appellant.	No. 294833 Michigan Tax Tribunal LC No. 00-320442

Before: HOEKSTRA, P.J., and FITZGERALD and BECKERING, JJ.

PER CURIAM.

Respondent appeals as of right the Tax Tribunal's order denying its motion for summary disposition under MCR 2.116(C)(8) and (10) and granting summary disposition under MCR 2.116(I)(2) to petitioner. The sole issue presented in this case is a legal question: whether a nonprofit entity, in computing its single business tax (SBT) liability,[1] may claim a capital acquisition deduction (CAD) or an investment tax credit (ITC) for capital assets that are used in the entity's tax-exempt activities. Because MCL 208.23(c) and MCL 208.35a(1)(a) only reference federal tax law to determine the type of assets that are subject to the CAD and the ITC, we affirm the Tax Tribunal's order.

I. BACKGROUND

A. FACTS

The facts are undisputed. Petitioner is a nonprofit entity, whose primary activity is the operation of a hospital. It is exempt from paying federal income tax under 26 USC 501(c). However, for tax years 1993 to 2001, the tax years at issue, petitioner conducted certain activities that were unrelated to its tax-exempt purpose. It paid federal tax on its "unrelated business taxable income." It also reported its unrelated taxable income on its SBT returns. In calculating its SBT liability, petitioner claimed a CAD (for years 1993 to 1999) and an ITC (for years 2000

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[1] The Single Business Tax Act, MCL 208.1 *et seq.*, has been repealed. 2006 PA 325.

and 2001) for its capital assets, regardless whether the assets were used for tax-exempt or nonexempt activities.

Respondent audited petitioner's tax returns and determined that petitioner was not entitled to a CAD or an ITC for capital assets that were used in its tax-exempt activities. After respondent's Office of Hearings denied petitioner's request for a refund, petitioner appealed to the Tax Tribunal.

B. RELEVANT STATUTES

MCL 208.20 provided that "[t]he tax base of nonprofit persons not required to pay federal income taxes shall be the sum of the net additions specified in sections 9 and 23 less the deductions specified in those sections." Section 23, which set forth the CAD that applied to petitioner's SBT liability for tax years 1993 to 1999, stated:

> After allocation as provided in section 40 or apportionment as provided in section 41, the tax base shall be adjusted by the following:
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> * * *
>
> (c) For a tax year beginning after September 30, 1989 but before January 1, 1997 and for tax years beginning after December 31, 1996 and before January 1, 2000 as provided in subdivision (h), deduct the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. . . . [MCL 208.23.]

MCL 208.35a, which set forth the ITC relevant to petitioner's SBT liability for tax years 2000 and 2001, stated:

> (1) For a tax year beginning after December 31, 1999, a taxpayer may claim a credit against the tax imposed by this act . . . .
>
> (a) Calculate the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes, provided that the assets are physically located in this state for use in a business activity in this state and are not mobile tangible assets.

MCL 208.35(1)(c) provided a tax exemption to "[a] person who is exempt from federal income tax under the internal revenue code." However, such an exempt person was required to pay tax on "[t]he adjusted tax base attributable to the activities giving rise to the unrelated taxable business income . . . ." MCL 208.35(1)(c)(iii). The Internal Revenue Code defines "unrelated business taxable income" as "the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business . . . ." 26 USC 512(a)(1). An "unrelated trade or business" is defined as "any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes or the profits derived) to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption . . . ." 26 USC 513(a).

C. MOTION FOR SUMMARY DISPOSITION

Respondent moved for summary disposition under MCR 2.116(C)(8) and (10) on petitioner's petition in the Tax Tribunal. It argued that based on the plain language of MCL 208.23(c) and MCL 208.35a(1)(a), federal tax treatment of petitioner's capital assets was the "key" to determining whether a CAD or ITC could be claimed for the assets. According to respondent, it was clear, pursuant to 26 USC 511 and regulations from the U.S. Department of Treasury, see 26 CFR 1.512(a)-(1), "that a nonprofit taxed for its unrelated business activities can claim a deduction or credit only for matters relating to those unrelated business activities." In addition, respondent argued that it had "consistently interpreted entitlement to a deduction by a partially tax-exempt entity as requiring that the deduction be part of the non-exempt part of its operations." It had done so in RAB 1989-47 and LR 1989-38. While respondent admitted that its revenue administrative bulletins and letter rulings were not binding authority, it claimed that its interpretation of the tax laws was entitled to great weight and deference. Finally, respondent argued that because deductions and credits are strictly construed in favor of the taxing authority, any doubt whether petitioner was entitled to the CAD or to the ITC should be resolved against petitioner.

In response, petitioner asserted that the plain language of MCL 208.23(c) did not require it to allocate its capital assets between tax-exempt and nonexempt activities when calculating the CAD. According to petitioner, federal tax law was only relevant to MCL 208.23(c) "in that it helps indentify [sic] the type of assets described in MCL 208.23 -- capital assets." Petitioner claimed that how it treated those assets for federal income tax purposes was irrelevant to MCL 208.23(c). It argued that respondent's interpretation of MCL 208.23 ignored the phrase "of a type" in the statute. Petitioner asserted that MCL 208.35a(1)(a) should be interpreted in the same manner, as the plain language of MCL 208.35a(1)(a) did not require capital assets to be allocated between tax-exempt and nonexempt activities. According to petitioner, MCL 208.35a(1)(a), like MCL 208.23(c), relied on federal tax law only to determine the assets that were to be included in a calculation of the ITC. In addition, petitioner claimed that if the Legislature had intended that a tax-exempt entity calculate the ITC based solely on capital assets used in its nonexempt activity, it would have referred to "unrelated business activity," rather than "business activity," both of which were statutorily defined.[2] Finally, petitioner argued that no

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[2] "Business activity" was defined, in pertinent part, as "a transfer of legal or equitable title to or rental of property . . . or the performance of services, or a combination thereof . . . with the object of gain, benefit, or advantage. . . ." MCL 208.3(2). "Unrelated business activity" was defined as "any business activity that gives rise to unrelated taxable income as defined in the internal revenue code. MCL 208.10(3).

deference should be given to the interpretations expressed by respondent in RAB 1989-47 and LR 1989-39, where the interpretations conflicted with the plain language of MCL 208.23(c) and MCL 208.35a(1)(a). Petitioner further argued that RAB 1989-47 should not apply because it clarified a specific agricultural exemption and the "facts, circumstances, and issues" in the bulletin and the present case were not similar. Likewise, it argued that LR 1989-38 was not relevant because it did not address how the CAD or the ITC should be calculated. Petitioner requested that it be granted summary disposition.

D. TAX TRIBUNAL DECISION

The Tax Tribunal granted summary disposition to petitioner. It began its analysis with the interpretation of MCL 208.23(c). It noted that the parties relied on different phrases in the statute to support their interpretations: "Respondent stresses the importance of the phrase 'for federal income tax purposes' while Petitioner directs the Tribunal's attention to the phrase 'of a type.'" The Tax Tribunal explained that the difference in emphasis was "not a case of hair-splitting":

> If the Tribunal determines the Legislature intended for the Code and Treasury Regulations to control interpretation of the statute, then only assets which are eligible for depreciation, amortization or accelerated cost recovery would be eligible for a CAD and [petitioner] would be required to allocate its deduction accordingly. . . . On the other hand, if the statute is interpreted to refer only to the type of assets that are eligible for a CAD as being capital assets, then the federal provisions could not be read as incorporated into the statute.

It noted an interpretation of a statute by an agency responsible for the statute's execution is to be accorded deference, but stated that it was required to interpret MCL 208.23(c) according to the statute's plain language.[3] The Tax Tribunal agreed with petitioner's interpretation:

> [Respondent's] reading of MCL 208.23(c) that federal tax treatment "is key" for eligibility finds no support in the statute itself. The statute describes its applicability to certain assets which are capitalized under the Code. It does not refer to or address in any way an allocation between tax-exempt and non-exempt uses. The Tribunal finds the language of the statute is clear and unambiguous. It refers to "tangible assets of a type" which are or will be eligible for certain recovery provisions under the Code.
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> Respondent states that "[f]or 'federal income tax purposes,' it is clear that a nonprofit taxed for its unrelated business activities can claim a deduction or credit only for matters relating to those unrelated business activities." However, the CAD is part of the SBT, a value-added tax plan that does not involve income

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[3] In addition, the Tax Tribunal stated that RAB 1989-47 and LR 1989-38 were not dispositive because neither addressed the CAD.

> tax. To decide that CAD eligibility is to be interpreted according to federal income taxation principles would be a matter of judicial construction that is not permitted, given the unambiguous language of the statute. Federal income taxation principles are not incorporated into MCL 208.23(c) in such a way as to require Petitioner to allocate a CAD between its exempt and non-exempt activities.

For the same reasons, the Tax Tribunal concluded "that federal income taxation provisions do not apply to MCL 208.35a, other than to determine that capitalized assets are the type of assets eligible for the ITC." It did note, however, that MCL 208.35a(1)(a), unlike MCL 208.23(c), included the phrase "business activity," but nonetheless concluded that this distinction did not require a different interpretation. It explained:

> MCL 208.35(a)(1)(a) [sic] does not distinguish between tax exempt or non-exempt activities. It does refer to assets that are: within Michigan; which are to be used for business activity; and which are not mobile, tangible assets. MCL 208.3(2) makes clear that "business activity" is broader in scope, encompassing both assets and performance of services that are not those performed for an employer, or a combination of the two. Taken together, the statutes provide a credit to taxpayers for certain capital assets, rather than ordinary assets such as inventory. These assets must be within Michigan, used for business activity, and be assets that are not mobile or tangible. Thus, the type of allocation required is solely an allocation between assets that fall within the category of assets as described above and other assets. Because the statutory language is clear and unambiguous, this is not an occasion for the Tribunal to exercise judicial reconstruction. No additional allocation requirement can be read into MCL 208.35(a)(1)(a) [sic]. [Citation omitted.]

The Tax Tribunal ended its opinion by concluding its "plain reading" of MCL 208.25a(1)(a) was consistent with the legislative history.

II. ANALYSIS

A. STATEMENT OF ISSUE

The issue before us is one of statutory interpretation: whether a tax-exempt entity, in calculating its SBT liability for unrelated taxable income, may claim a CAD, pursuant to MCL 208.23(c), or an ITC, pursuant to MCL 208.35a(1)(a), for capital assets used in its tax-exempt activities.

Respondent's arguments on appeal are essentially the same arguments it made before the Tax Tribunal. Respondent argues that the Tax Tribunal read out of MCL 208.23(c) and MCL 208.35a(1)(a) the language referencing the Internal Revenue Code for eligibility of a deduction or a credit. Respondent further argues that the Tax Tribunal erred in its conclusion that tax-exempt activity can constitute "business activity," because tax-exempt activity is not done "with the object of gain, benefit, or advantage."

B. STANDARD OF REVIEW AND APPLICABLE LAW

Our review of a decision of the Tax Tribunal is limited. Absent an allegation of fraud, we review a Tax Tribunal decision for misapplication of the law or adoption of a wrong legal principle. *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 75; 780 NW2d 753 (2010). Statutory interpretation is a legal question that is reviewed de novo; however, we generally defer to the Tax Tribunal's interpretation of a statute that it is charged with administering and enforcing. *Grimm v Dep't of Treasury*, ___ Mich App ___; ___ NW2d ___ (2010); *Mich Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 491; 618 NW2d 917 (2000). We review de novo the grant or denial of a motion for summary disposition. *Briggs Tax Serv, LLC*, 485 Mich at 75.

The primary goal of statutory interpretation is to give effect to the intent of the Legislature. *Dep't of Agriculture v Appletree Marketing, LLC*, 485 Mich 1, 8; 779 NW2d 237 (2010). We begin with the language of the statute. *United States Fidelity Ins & Guaranty Co v Mich Catastrophic Claims Ass'n (On Rehearing)*, 484 Mich 1, 13; 773 NW2d 243 (2009). If the language of the statute is clear and unambiguous, the Legislature is assumed to have intended the meaning clearly expressed, and the statute must be enforced as written. *Id.* The Legislature is presumed to have used each word in a statute for a purpose, and effect should be given to every clause. *Priority Health v Comm'r of the Office of Fin & Ins Servs*, 284 Mich App 40, 45; 770 NW2d 457 (2009). A construction that would render any statutory language nugatory should be avoided. *Detroit City Council v Mayor of Detroit*, 283 Mich App 442, 451; 770 NW2d 117 (2009). In addition, while "respectful consideration" is given to the interpretation of a statute by the agency charged with the statute's execution, such an interpretation cannot conflict with the plain language of the statute. *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 103; 754 NW2d 259 (2008).

C. RESOLUTION OF ISSUE

We find no error in the Tax Tribunal's conclusion that MCL 208.23(c) and MCL 208.35a(1)(a) only reference federal tax law in order to determine the type of assets that are subject to the CAD or the ITC. MCL 208.23(c) directs the taxpayer to "deduct the cost . . . paid or accrued in the taxable year of tangible assets *of a type* that are, or under the internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes" (emphasis added). MCL 208.35a(1)(a) contains the same language. Respondent's interpretation of the statutes—that the statutes permit a CAD or an ITC only to the extent allowed by federal tax law—reads out of the statutes the phrase "of a type." Indeed, respondent provides no explanation how its interpretation of the two statutes gives any effect to the phrase "of a type." Because a statute must be construed to give effect to every clause, *Priority Health*, 284 Mich App at 45, respondent's interpretation of the statutes is contrary to the statutes' plain language.

As the Tax Tribunal noted, MCL 208.35a(1)(a) contains a requirement that is not included in MCL 208.23(c). Assets, to be eligible for the ITC, must not only be "of a type" that are "eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes," the assets must be "physically located in this state for use in a business activity in this state" and not be "mobile tangible assets." We find no merit to respondent's argument that because "non-profit activities are not engaged in 'with the object of gain, benefit, or advantage,'" see MCL 208.3(2), the Tax Tribunal erred in concluding that the phrase "business activity" in MCL 208.23a(1)(a) does not require allocation of assets between tax-exempt and nonexempt activities. The Legislature, in addition to defining "business activity," MCL 208.3(2), also provided a definition for "unrelated business activity," MCL 208.10(3). "Unrelated business activity" was defined as "any business activity that gives rise to unrelated taxable income as defined in the internal revenue code." *Id.* We agree with petitioner that if the Legislature had intended to require a tax-exempt entity to calculate the ITC solely on its nonexempt activities, it would have used the phrase "unrelated business activity," rather than "business activity." In addition, respondent fails to persuade us of any error in the Tax Tribunal's analysis that the inclusion of the requirements of "for use in a business activity" and "are not mobile tangible assets" in MCL 208.35a(1)(a) was to differentiate between capital assets and ordinary assets such as inventory.

Further, we admit to finding plausible respondent's argument that the interpretation of MCL 208.23(c) and MCL 208.35a(1)(a) advocated by petitioner and accepted by the Tax Tribunal is illogical, as it, in effect, allows petitioner to "double dip." According to respondent, the "double dip" results from petitioner being granted tax-exempt status on its nonprofit activities and, in addition, also being permitted to reduce the taxes it owes on its unrelated taxable income with capital assets used in its tax-exempt activities. Even though respondent does not cite the absurd-results rule, it is, in effect, arguing that the rule precludes accepting the Tax Tribunal's interpretation of the statues. Although the absurd-results rule may exist in Michigan, we find it unavailing because, under circumstances of the case, it would require us to hold that no reasonable lawmaker could have conceived of this "double dip." *Detroit Int'l Bridge Co v Commodities Export Co*, 279 Mich App 662, 674-675; 760 NW2d 565 (2008). Respondent makes no such argument. And, regardless, we do not believe that such a finding is sustainable.

Affirmed.

/s/ Joel P. Hoekstra
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering